



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

Commencement of the Hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that the Landlord's Application for Dispute Resolution (the Application) and an evidentiary package were sent to the tenant by way of registered mail on October 19, 2018. The landlord provided a copy of the Canada Post Tracking Numbers to confirm this registered mailing. In accordance with sections 88, 89 and 90

of the *Act*, I find that the tenant was deemed served with the Application and an evidentiary package on October 24, 2018, the fifth day after its registered mailing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One Month Notice?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord gave undisputed affirmed testimony that this tenancy began on October 01, 2013, with a monthly rent of \$600.00, due on the first day of each month. The landlord testified that no security deposit was paid.

A copy of the signed One Month Notice dated September 27, 2018, with an effective date of October 31, 2018, was included in the landlord's evidence. The landlord cited the following reasons for the issuance of the One Month Notice:

Tenant is repeatedly late paying rent.

Rental unit must be vacated to comply with a government order.

The landlord gave written evidence that a One Month Notice was posted to the tenant's door on September 27, 2018.

The landlord also provided copies of cheques with non-sufficient funds for May 2018 and September 2018 as well as a receipt for August 2018 rent, dated August 11, 2018, as evidence of the tenant repeatedly paying the rent late.

During the course of the hearing the landlord testified that the tenant has paid the outstanding rent for September 2018 in the amount of \$600.00. The landlord submitted that they are seeking an Order of Possession based on the uncontested One Month Notice served to the tenant on September 27, 2018, for repeatedly paying the rent late.

Analysis

As the landlord confirmed that they received the unpaid rent for September 2018, I dismiss their Application for a monetary order for unpaid rent for September 2018, without leave to reapply.

Section 47 of the *Act* establishes that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so. Section 47(4) and (5) of the *Act* stipulates that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 10 Days after the date the tenant receives the notice, is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

In accordance with sections 88 and 90 of the *Act*, I find that the One Month Notice was deemed served to the tenant on September 30, 2018, three days after its posting.

Based on the landlord's undisputed evidence and sworn testimony, I find that the tenant did not make an application pursuant to section 47(4) of the *Act* within 10 days of receiving the One Month Notice. In accordance with section 47(5) of the *Act*, due to the failure of the tenant to take this action within 10 days, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on October 31, 2018, the effective date on the One Month Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by October 31, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 26, 2018

Residential Tenancy Branch